

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WHALECO INC.

Plaintiff,

v.

SHEIN US SERVICES, LLC, SHEIN
DISTRIBUTION CORPORATION, and
ROADGET BUSINESS PTE. LTD.

Defendants.

No. 1:23-CV-11596 (DJC)

**DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
THEIR MOTION TO DISMISS**

Pursuant to Rule 201 of the Federal Rules of Evidence, Defendants Shein US Services, LLC, Shein Distribution Corporation, and Roadget Business Pte. Ltd. (collectively, “Defendants”) request this Court take judicial notice of the following documents in consideration of Defendants’ concurrently-filed Motion to Dismiss:

Exhibit 1: An official government report titled “2022 Review of Notorious Markets for Counterfeiting and Piracy,” by the Office of the United States Trade Representative, published on January 31, 2023, available at [https://ustr.gov/sites/default/files/2023-01/2022%20Notorious%20Markets%20List%20\(final\).pdf](https://ustr.gov/sites/default/files/2023-01/2022%20Notorious%20Markets%20List%20(final).pdf).

Exhibit 2: PDD Holdings Inc.’s 2022 Annual Report (Form 20-F) (Apr. 26, 2023), filed with the SEC, available at <https://investor.pddholdings.com/static-files/757dfc0f-ba08-4455-944c-89997c9dbca8>.

Exhibit 3: The order granting Roadget’s motion for an emergency temporary restraining order in *Roadget Business Pte. Ltd. v. Whaleco, Inc.*, No. 1:22-cv-07119, Dkt. 97 (N.D. Ill. July 31, 2023).

Exhibit 4: The temporary restraining order in *Roadget Business Pte. Ltd. v. Whaleco, Inc.*, No. 1:22-cv-07119, Dkt. 110 (N.D. Ill. Aug. 11, 2023).

Exhibit 5: The order extending the temporary restraining order through briefing and a determination on Shein’s motion for a preliminary injunction in *Roadget Business Pte. Ltd. v. Whaleco, Inc.*, No. 1:22-cv-07119, Dkt. 144 (N.D. Ill. Aug. 25, 2023).

Exhibit 6: The complaint filed in *Whaleco Inc. v. Temuds.com et al.*, No. 3:23-cv-00367-LJC, Dkt. 1 (N.D. Cal., Jan. 25, 2023).

Exhibit 7: A printout of a webpage from GAP’s website listing “Pocket T-Shirt” at \$5.97, available at

https://www.gap.com/browse/product.do?pid=440850042&vid=1&tid=gpl000066&kwid=1&ap=7&gad=1&gclid=CjwKCAjwloynBhBbEiwAGY25dCw8xbyQFrliWru4635FRUXaA7wPO64HZmpIYY02RxoPbOUgrt-p-BoCDGEQAvD_BwE&gclsrc=aw.dss.

Exhibit 8: A printout of a webpage from ZARA’s website listing “Lyocell Cropped T-shirt” at \$5.99, *available at* <https://www.zara.com/us/en/lyocell-cropped-t-shirt-p00085029.html?v1=247637952&v2=1566992>.

Exhibit 9: A printout of a webpage from H&M’s website listing “Cotton T-shirt” at \$5.99, *available at* https://www2.hm.com/en_us/productpage.0979236004.html.

Exhibit 10: A printout of a webpage from Forever21’s website listing “Basic Organically Grown Cotton Tee” at \$4.99, *available at* https://www.forever21.com/us/2000457787.html?dwvar_2000457787_color=08.

Exhibit 11: A printout of a webpage from Primark’s website listing “Crew Neck Short Sleeve T-Shirt” at \$4.50, *available at* <https://www.primark.com/en-us/p/crew-neck-short-sleeve-t-shirt-yellow-991062705208>.

Exhibit 12: A printout of a webpage from Boohoo’s website listing “Oversized California Script Graphic T-shirt” at \$6.00, *available at* <https://us.boohoo.com/oversized-california-script-graphic-t-shirt/BMM46500.html>.

Exhibit 13: A printout of a webpage from Walmart’s website listing “Oalirro Women’s Tops, Tees & Blouses Deals Clearance Women Tops and Blouses Women’s Fashion Plus-Size Solid O-Neck Loose Short Sleeve T-shirt Pullover Tops Blue” at \$3.99, *available at* <https://www.walmart.com/ip/Oalirro-Women-s-Tops-Tees-Blouses-Deals-Clearance-Women-Tops-Fashion-Plus-Size-Solid-O-Neck-Loose-Short-Sleeve-T-shirt-Pullover-Blue/2131276981>.

Exhibit 14: A printout of a webpage from Amazon’s website listing “3D Print T-Shirts for Men, Men’s Summer Comfy Daily Tops Short Sleeve Crewneck Tees Casual Cool Athletic Shirts” at \$1.99, available at https://www.amazon.com/T-Shirts-Mens-Crewneck-Athletic-Shirts/dp/B0BKWN6GRJ/ref=sr_1_10?crid=1UJIJEQH7N94&keywords=t-shirt%2B1%2Bpack&qid=1692646090&refinements=p_36%3A-600&rnid=2661611011&srefix=t-shirt%2B1%2Bpack%2Caps%2C103&sr=8-10&th=1&psc=1.

I. LEGAL STANDARD

Courts may take judicial notice of facts that are “not subject to reasonable dispute because [they] . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Courts may “take judicial notice at any stage of the proceeding.” Fed. R. Evid. 201(d). Thus, courts may properly consider “matters of which judicial notice may be taken” when ruling on a motion to dismiss. *Nollet v. Justices of Trial Ct. of Mass.*, 83 F. Supp. 2d 204, 208 (D. Mass. 2000), *aff’d*, 248 F.3d 1127 (1st Cir. 2000). Indeed, “[i]n evaluating a Rule 12(b)(6) motion,” a court may consider “public records, facts susceptible to judicial notice, documents sufficiently referred to in the complaint, and documents central to the plaintiff’s claims” without “converting the motion into one for summary judgment.” *Benjamin v. Fremont Inv. & Loan*, No. 17-11727-PBS, 2018 WL 4017595, at *2 (D. Mass. Aug. 22, 2018) (cleaned up).

II. DISCUSSION

Judicial notice of Exhibit 1 —the Office of the United States Trade Representative’s report titled “2022 Review of Notorious Markets for Counterfeiting and Piracy” — is proper because it is an official report published by a U.S federal agency on the government’s website. *See Barnstable Cnty. v. 3M Co.*, No. CV 17-40002, 2017 WL 6452245, at *5 (D. Mass. Dec. 18, 2017)

(taking judicial notice of “an official investigative report issued by a County committee” on a motion to dismiss); *Kader v. Sarepta Therapeutics, Inc.*, No. 14-cv-14318-ADB, 2016 WL 1337256, at *11 (D. Mass. Apr. 5, 2016) (taking judicial notice of FDA official statements published on a government website on a motion to dismiss); *Gustavsen v. Alcon Labs., Inc.*, 272 F. Supp. 3d 241, 252 (D. Mass. 2017) (noting it is “proper for courts to consider” on a motion to dismiss “public documents put into the record by both plaintiffs and defendants,” including “material appearing on government websites”).

Judicial notice of Exhibit 2 — PDD Holdings Inc.’s SEC 2022 Annual Report (Form 20-F) — is proper because this Court “may consider public filings with the SEC when deciding a motion to dismiss.” *Caviness v. Evans*, 229 F.R.D. 354, 359 n. 45 (D. Mass. 2005) (citing *Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co.*, 267 F.3d 30, 33 (1st Cir. 2001)); *Fire & Police Pension Ass’n of Colorado v. Abiomed, Inc.*, 778 F.3d 228, 232 n.2 (1st Cir. 2015) (taking judicial notice public filings with the SEC in considering a motion to dismiss); *Whitehead v. Inotek Pharms. Corp.*, No. 17-CV-10025-LTS, 2018 WL 4732774, at *1 n.3 (D. Mass. June 27, 2018) (“SEC filings, risk disclosures, and undisputed communications referenced in the complaint are the sorts of documents courts routinely consider at the Motion to Dismiss stage.”).

Judicial notice of Exhibits 3 through 6 — court orders and filings in other actions involving the parties — is proper because this Court may take judicial notice of court documents and orders in other courts, including the fact of their filing or issuance and the existence of their contents. *See Kowalski v. Gagne*, 914 F.2d 299, 305 (1st Cir. 1990) (“[F]ederal courts may take judicial notice of proceedings in other courts”); *E.I. du Pont de Nemours & Co., Inc. v. Cullen*, 791 F.2d 5, 7 (1st Cir. 1986) (taking judicial notice of related complaint filed by plaintiff in state court); *Barnstable Cnty. v. 3M Co.*, 2017 WL 6452245, at *4 (D. Mass. Dec. 18, 2017) (taking judicial

notice of the complaint, answer, counterclaim, and third-party complaint from two state court actions on a motion to dismiss).

Judicial notice of Exhibits 7 through 14 — printouts of webpages from websites of fast fashion retailers (as alleged by Plaintiff in the complaint) listing t-shirt prices — is proper because this Court is permitted to take judicial notice of website postings from corporate websites that are publicly accessible and are readily verified through an internet search. *See Piper v. Talbots, Inc.*, 507 F. Supp. 3d 339, 343 (D. Mass. 2020) (taking judicial notice of a corporate webpage on motion to dismiss because “they are publicly accessible and are, thus, readily verified through an internet search”); *Local No. 8 IBEW Ret. Plan & Trust v. Vertex Pharm. Inc.*, 838 F.3d 76, 78 n.3 (1st Cir. 2016) (considering at the motion to dismiss phase the text of a publicly made press release); *Barron v. Snyder's-Lance, Inc.*, No. 13-62496-CIV, 2015 WL 11182066, at *3-*4 (S.D. Fla. Mar. 20, 2015) (taking judicial notice of online pricing information from certain internet retailers, including Amazon and Walmart, on a motion to dismiss); *Fernandez v. Sierra Plastics, Inc.*, No. EP20CV00290DBATB, 2021 WL 1050047, at *17 n. 10 (W.D. Tex. Mar. 16, 2021), *report and recommendation adopted*, No. EP-20-CV-290-DB-ATB, 2021 WL 2767299 (W.D. Tex. Apr. 6, 2021) (taking judicial notice of pricing information on an airline’s website); *see also* 2 McCormick On Evid. § 330, Facts Capable of Certain Verification, (8th ed.) (“Information obtained from online sources is becoming a frequently used basis for judicial notice. To this point, government and corporate websites . . . are among the most commonly relied upon sources.”).

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court take judicial notice of Exhibits 1-14 in connection with their concurrently-filed Motion to Dismiss.

DATED: August 28, 2023
Boston, Massachusetts

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was filed on August 28, 2023 through the ECF System and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: August 28, 2023

/s/ Harvey J. Wolkoff